

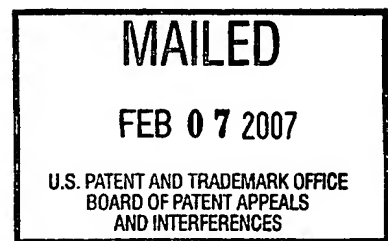
The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID S. BREED, WILBUR E. DUVALL, and
WENDELL C. JOHNSON

Appeal 2006-2983
Application 10/733,957
Technology Center 3600



Decided: February 7, 2007

Before TERRY J. OWENS, ANITA PELLMAN GROSS and LINDA E.
HORNER, *Administrative Patent Judges*.
HORNER, *Administrative Patent Judge*.

STATEMENT OF THE CASE

The Appellants seek our review of the Examiner's final rejection of claims 60, 62, and 64-68 under 35 USC § 134 (2002). We have jurisdiction under 35 USC § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellants invented an apparatus and method for sensing characteristics and other information about an occupant of a vehicle and using this information to control vehicular systems, subsystems, and components (Specification 4, ll. 34-46). Claims 60 and 62, reproduced below, are representative of the subject matter on appeal.

60. An apparatus for sensing pressure applied to a seat by an occupant of the seat and for controlling deployment of an airbag, comprising:

a bladder defining a chamber, said bladder being adapted to be arranged in a seat portion of the seat;

a control module arranged to control deployment of the airbag;
and

a pressure sensor for measuring a pressure in said chamber, said pressure sensor generating a signal based on the measured pressure in said chamber and providing said signal to said control module.

62. A method for controlling an occupant restraint device arranged to protect an occupant in a vehicle in a crash involving the vehicle, comprising the steps of:

arranging a bladder defining a chamber in a seat portion of a seat in the vehicle;

measuring a pressure in the chamber;

providing a signal based on the measured pressure in the chamber to a control module; and
controlling deployment of the occupant restraint device by means of the control module.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Fortune	US 6,101,436	Aug. 08, 2000
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The Examiner rejected claims 60, 62, and 64-68 under 35 USC § 102(b) as being anticipated by Fortune.

The Appellants rely upon the following as evidence of patentability:

Breed	US 5,822,707	Oct. 13, 1998
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ISSUE

The Appellants contend that rejected claims 60, 62, and 64-68 are entitled to the benefit, under 35 USC § 120, of the filing date of Breed so as to remove Fortune as prior art to the rejected claims (Brief 4). The Examiner contends that the rejected claims are not entitled to the benefit of Breed's filing date, because Breed does not fully support the subject matter of independent claims 60, 62, and 65 in the manner provided by 35 USC § 112, first paragraph (Answer 4-5). The issue before us is whether the Appellants have shown that Examiner erred in rejecting claims 60, 62, and 64-68 under 35 USC § 102(b) based on a finding that

the claims are not entitled to the benefit of Breed's filing date under 35 USC § 120. More particularly, the issue is whether the disclosure of Breed provides adequate support for the claims under 35 USC § 112, first paragraph.

FINDINGS OF FACT

A preponderance of the evidence establishes the following facts:

The control module of the claims controls deployment of an occupant restraint device, such as an airbag, and the control module also receives a signal indicating a measured pressure in a chamber of a seat bladder. The claims do not require that the control module control deployment of the airbag in connection with, or in response to, the received signal of the measured pressure. Rather, the independent claims 60, 62, and 65 require only that a single control module both control deployment of the occupant restraint device and receive a signal of the measured pressure. Claims 64 and 66 further require that the occupant restraint device is an airbag. Claims 67 and 68 further require that the control module control at least one other vehicular system, subsystem, or component, such as a pressure control device to control pressure in the chamber.

Breed describes a vehicle seat with a seat portion. (Breed, Figure 1). Breed describes that the seat of the invention includes a control module (150), as shown, for example, in Figures 1, 5, and 9 (Breed, col. 5, l. 35).

Breed describes, referring to Figure 1, that the seat of the invention has a height sensor comprised of transmitter (120) and a receiver (121) for measuring the height of the occupant. (Breed, col. 5, ll. 32-33). The control module (150)

interprets signals between the transmitter (120) and receiver (121) and controls the height of the head rest based on this input (Breed, col. 5, l. 62-col. 6, l. 38). Breed describes that the seat of the invention may further include a third combination transmitter and receiver (122), referring to Figure 4 (Breed, col. 9, ll. 12-17). Breed describes additional sensors which may be used in the seat of the invention, referring to Figure 2, in which the seat, in addition to height sensors (120, 121), also has a weight sensor (200) (Breed, col. 7, ll. 6-11).

Breed describes that weight sensor (200) may be a displacement sensor (Breed, col. 7, l. 11). Breed describes that the combination of weight and height can be used to positively identify the driver from among a class of drivers who operate the vehicle and the seat can be automatically adjusted to the proper position for that driver (Breed, col. 7, ll. 54-58).

Breed discloses that Figure 5 is a view of the seat of Figure 1 showing an arrangement for changing the stiffness and damping of the seat (Breed, col. 9, ll. 45-47). Breed describes, referring to Figure 5, that the seat of the invention has a container (515) filled with air and a pressure transducer (560) (Breed, col. 9, ll. 45-57). The pressure transducer (560) monitors the pressure within the container (515) and inputs this information into the control circuit (150) of the seat of Figure 1 (Breed, col. 9, ll. 57-59). The control circuit (150) controls an air compressor (555) for changing the stiffness and damping of the seat (Breed, col. 9, ll. 55-57).

Breed describes, referring to Figure 9, that the vehicle of the invention includes an airbag (900). (Breed, col. 11, ll. 35-38). Breed describes that the control module (150) of the seat of Figure 1 can also be used to control deployment

of the airbag based on input from height sensors (120, 121, 122) and weight sensor (200) (Breed, col. 12, ll. 23-29). Breed describes that the control module (150) of Figure 1, used to control the deployment of the airbag, is the same control module (150) of Figure 1, used to control seat stiffness (Breed, col. 11, ll. 33-41 and col. 9, ll. 45-47).

We find that a person skilled in the art as of the filing date of Breed would have understood, based on the disclosure of Breed, that the Appellants were in possession of the invention of claims 60, 65, and 66, because Breed describes an airbag (900) arranged in a vehicle to protect the occupant of the vehicle, a seat having a seat portion, a bladder (515) defining a chamber in the seat portion, a control module (150) that controls deployment of the airbag (900), and a pressure sensor (560) for measuring a pressure in the chamber, generating a signal based on the measured pressure, and providing that signal to the control module (150).

Based on our findings of Breed's disclosure, we further find that a person skilled in the art as of the filing date of Breed would have understood that the Appellants were in possession of the invention of claims 62 and 64, because Breed describes arranging a bladder (515) defining a chamber in the seat portion of a vehicle, measuring a pressure in the chamber using a pressure sensor (560), providing a signal based on the measured pressure in the chamber to a control module (150), and controlling deployment of an airbag (900) by means of the control module (150).

We further find that a person skilled in the art as of the filing date of Breed would have understood that the Appellants were in possession of the invention of

claims 67 and 68, because Breed describes using the control module (150) to control the stiffness and damping of the seat using air compressor (555).

We find that a person of ordinary skill in the art at the time of Breed would have had an understanding of commercially available sensors and would have had knowledge on how to use microprocessors to receive signals from the sensors and process that information to control components of the vehicle. Breed provides sufficient direction and guidance of how to make and use the invention, that one of ordinary skill in the art, would have been enabled to make and use the claimed invention without undue experimentation.¹

PRINCIPLES OF LAW

To determine whether the disclosure in Breed satisfies the requirements of section 112, first paragraph, for the claimed invention, we must first determine the scope of the claims. We determine the scope of the claims in patent applications “not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321, 1329 (Fed. Cir. 2005) (en banc) (quoting *In re Am.*

¹ We note that the Examiner bears the burden of proof on lack of enablement, see *In re Wright*, 999 F.2d 1557, 1561-62, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993). The Examiner does not provide any explanation in the Answer as to why the claims are not adequately enabled by the description of Breed that would support a conclusion of undue experimentation. The Examiner’s position appears to be based on a lack of written description. In any event, because the Examiner’s final rejection referred to a lack of enablement, we have treated this issue along with written description.

Acad. of Sci. Tech. Ctr., 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1830 (Fed. Cir. 2004)).

Once we have determined claim scope, we must then determine whether the requirements of section 112, first paragraph have been met in the specification of Breed. Section 112, first paragraph, requires that the specification satisfy written description and enablement requirements.²

The factual inquiry for determining whether a specification provides sufficient written description for the claimed invention is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997).

The PTO bears the initial burden when rejecting claims for lack of enablement. *In re Wright*, 999 F.2d 1557, 1561-62, 27 USPQ2d 1510, 1513 (Fed. Cir. 1993).

It is by now well-established law that the test for compliance with the enablement requirement in the first paragraph of 35 U.S.C. § 112 is whether the

² The Examiner did not base his refusal to accord benefit on the best mode requirement of section 112, first paragraph. As such, this issue is not before this Board.

disclosure, as filed, is sufficiently complete to enable one of ordinary skill in the art to make and use the claimed invention without undue experimentation. *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988). “Enablement is not precluded by the necessity for some experimentation However, experimentation needed to practice the invention must not be undue experimentation. The key word is ‘undue,’ not ‘experimentation.’” *In re Wands*, 858 F.2d at 736-737, 8 USPQ2d at 1404.

ANALYSIS

The claimed control module controls deployment of the occupant restraint device, or airbag, and receives a signal from a pressure sensor. The claims do not require that the control module control deployment of the airbag in connection with, or in response to, the received signal of the measured pressure.

Breed provides written description of, and enables, the claimed invention. In particular, Breed describes a seat of the invention, as shown in Figure 1. Rather than show all of the features in a single drawing, Breed separates the features of the invention into separate figures. Breed, thus, adds further features to the seat of Figure 1 in Figures 2, 5, and 9. The added features of Figures 2, 5 and 9 are controlled by the control module (150) of Figure 1. For example, the control module (150) receives a signal from a pressure sensor (560) of Figure 5 indicating the pressure in the chamber of the seat bladder (515). The control module (150) also controls deployment of an airbag (900) in Figure 9 based on signals received from height sensors (120, 121, 122) and weight sensor (200). Breed describes that

the control module (150) can also control adjustment of the stiffness of the seat based on the signal from the pressure sensor (560).

Based on our interpretation of the scope of the claims and our findings as to Breed's disclosure, we find that Breed provides sufficient written description of the claimed invention, because a person skilled in the art as of the filing date of Breed would have understood that the Appellants were in possession of the invention now claimed. Further, we find that Breed's disclosure is sufficiently complete to enable one of ordinary skill in the art to make and use the claimed invention without undue experimentation. As such, claims 60, 62, and 64-68 are entitled to the benefit of the filing date of Breed, because Breed discloses the claimed invention in the manner provided by 35 USC § 112, first paragraph.

CONCLUSIONS OF LAW

We conclude the Examiner erred in refusing to award claims 60, 62, and 64-68 benefit of the filing date of Breed under 35 USC § 120, and thus erred in rejecting these claims under 35 USC § 102(b) as being anticipated by Fortune.

DECISION

The decision of the Examiner to reject claims 60, 62, and 64-68 is reversed.

Appeal 2006-2983
Application 10/733,957

REVERSED

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

Anita Pellman Gross
ANITA PELLMAN GROSS
Administrative Patent Judge

Linda E. Horner
LINDA E. HORNER
Administrative Patent Judge

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